Bail Slip

The Appellant/ Accused No.3 (Viz. Subramaniam alias Palanisamy) in S.C.No.206/99 on the file of the II Additional Sessions Judge, Erode was directed to be released on bail in and by the order of this Court dated 10.7.2000 in Crl.M.P.2932/2000 in C.A.No.439/2000.

The Appellants/ Accused Nos.1,2 and 4 (Viz. Sivasamy, Fitter Mani alias Marisamy and Marammal) in S.C.No.206/99 on the file of the II Additional Sessions Judge, Erode were directed to be released on bail in and by the order of this Court dated 10.7.2000 in Crl.M.P.3215/2000 in Crl.A.No.497/2000.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 16.08.2005

CORAM

THE HONOURABLE MR. JUSTICE N.DHINAKAR
AND
THE HONOURABLE MR. JUSTICE M.CHOCKALINGAM

CRL. APPEAL NOS. 439 & 497 OF 2000

Subramaniam @ Palanisamy .. Appellant in CA No.439/00
(Accused No.3)

1) Sivasamy
2) Fitter Mani @ Marisamy
3) Marammal .. Appellant in CA No.497/00
Accused No.1,2 and 4

- Vs -

State rep. By
Inspector of Police
Sathyamangalam Police Station
Erode District.
(Cr.No.443/98) .. Respondent in both Cas

Appeal preferred against the conviction and sentence passed by the learned II Addl. Sessions Judge, Erode, made in S.C. No. 206 of 1999 dated 17.4.2000 as stated therein.

For Appellants : Mr. A.Balaguru for A-3 in CA 439/00
Mr. N.Manokaran for A-1, A-2 & A-4 in CA No.497/00

For Respondent : Mr. V.M.R. Rajendran, APP

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COMMON JUDGMENT

(JUDGMENT OF THE COURT WAS DELIVERED BY M.CHOCKALINGAM, J.)

This judgment shall govern the two criminal appeals, namely, C.A. Nos.439 and 497 of 2000. While C.A. No.439/2000 is broughtforth by A-3, C.A. No.497/2000 is broughtforth by A-1, A-2 and A-4 in S.C. No.206 of 1999. A-1 stood charged for an offence under Section 302 IPC, while A-2 to A-4 stood charged for an offence under Section 302 read with 34 IPC. A-1 to A-4 were also charged under Section 201 IPC. They were found guilty by the II Addl. Sessions Judge, Erode and A-1 was convicted under Section 302 IPC, while A-2 to A-4 were convicted under Section 302 read with 34 IPC and each one of them was awarded life imprisonment. All the accused were found guilty under Section 201 IPC and they were sentenced to undergo one year rigourous imprisonment. Aggrieved over the conviction and sentence, the appellants have broughtforth these appeals.

2. The short facts necessary for the disposal of these appeals could be stated thus :-

A-4 is the wife of the deceased, Vasudevan. P.W.1 is the son of the deceased and A-4. A-4 had illicit intimacy with Sivasamy and Marisamy. The same came to the knowledge of the deceased and there were quarrels among the spouses. Therefore, A-4 decided to do away with her husband with the help of the other three accused and, hence, a conspiracy was hatched by the appellants. Pursuant to the conspiracy, on a Saturday in the month of May 1997 at about 2.00 a.m. when the deceased was sleeping outside the house and A-4 along with P.W.1, aged ten years were lying inside the house, P.W.1 woke up and he did not find his mother, A-4 and when he looked through the backdoor window he witnessed one of the accused closing the mouth and nose of the deceased, while another accused squeezed the testicles. The remaining accused caught hold of the hands of the deceased. Within a short time the deceased died due to their acts. Thereafter, the other accused put the dead body in a gunny bag, tied it and buried it in a shallow grave near the house. A-1 to A-3 left the place of occurrence and A-4 came back after sometime. Though P.W.1 had seen the occurrence, due to fear for his life, he did not speak to anybody about the occurrence.

3. P.W.2, who is a contractor known to the family, came over to the house on different occasions asking about the husband of A-4. She was telling some false reasons for his absence. After a period of 1-1/2 years, on 2.10.98 when P.W.2 came to the house of A-4 and questioned her as to the different answers given by her, she confessed about her killing her husband and burying the dead body with the help of the other accused. Immediately, P.W.2 advised A-4 to go over to the place of the Village Administrative Officer and inform him. Accordingly, at 9.30 a.m. on 2.10.98, A-4 went to P.W.3, the Village Administrative Officer and gave a statement. The said statement given by A-4 was recorded by P.W.3, which stands marked as Ex.P-1 and he placed Ex.P-1 along with his special report, Ex.P-2 before P.W.13, the Inspector of Police, Satyamangalam, on the

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strength of which a case came to be registered in crime No.443/93 under Sections 302 and 201 IPC. Ex.P-21 is a copy of the printed first information report. The express reports were despatched to the Court.

4. A-4 gave a confessional statement to the investigating officer and the same was recorded in the presence of witnesses. Thereafter, the investigating officer proceeded to the scene of occurrence where in the presence of witnesses prepared an observation mahazar, Ex.P-3 and drew a rough sketch, Ex.P-26. The scene of occurrence was photographed. Thereafter, he gave a requisition to the Tahsildar to come over to the scene of occurrence for the purpose of exhuming the dead body. Accordingly, P.W.7, the Tahsildar came to the spot and in his presence the skeletal remains were exhumed. The investigating officer thereafter conducted inquest over the skeletal remains of the deceased and prepared inquest report, Ex.P-9. A requisition was given to the Government Hospital for conducting autopsy.

5. On receipt of the requisition, P.W.8, the doctor attached to the Government Hospital, came over to the spot and conducted autopsy over the skeletal remains and issued Ex.P-12, the post-mortem certificate.

6. In the meantime, A-4 was sent to court for judicial remand. A-1 to A-3 were arrested on 3.10.98 following the confessional statement of A-4. All the material objects recovered from the spot were sent to the court with a requisition to send them for chemical analysis. The court by forwarding the material objects received Ex.P-17, chemical analysis report and Ex.P-18, serologist report. Pending investigation, the photographs of the deceased were obtained from P.W.5 and along with the skull they were sent for superimposition to the Forensic Department. Accordingly, they were sent and on examination found to be that of the deceased, Vasudevan and a report, Ex.P-13, was given by the expert, P.W.9. On completion of the investigation, the investigating officer filed the final report against the accused. The case was thereafter committed to the court of sessions and necessary charges were framed and the accused were tried.

7. In order to substantiate the charges framed against the accused before the trial court, the prosecution marched thirteen witnesses and relied on twenty-eight exhibits and eighteen material objects. On completion of the evidence on the side of the prosecution, the accused were questioned under Section 313 Cr.P.C. as to the incriminating circumstances appearing against them in the evidence of the witnesses. They denied them as false. No defense witness was examined nor any documents were marked. After hearing the arguments advanced by both the sides and on scrutiny of the materials available, the court found all the accused guilty as per the charges and sentenced them as narrated above. Hence this appeal at the instance of the accused, four in number.

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8. Learned counsel appearing for the appellants inter alia made

the following submissions. Before the trial court the prosecution had no direct evidence to offer. Therefore it rested its case on circumstantial evidence. The main circumstance, according to the prosecution, was the extra-judicial confession alleged to have been given by A-4 to P.W.2 after a period of 1-1/2 years. According to the prosecution the occurrence had taken place in May 1997, but A-4 had given the confessional statement only on 2.10.98, (i.e.) after a period of nearly one year and five months. Even from the evidence of P.W.2 it is clear that he was in the practice of coming to the house of the deceased and A-4 often, but there could not have been any necessity for A-4 to have come out making such a confessional statement that she murdered her husband with the help of the other three accused pursuant to a conspiracy that too after a period of 1-1/2 years. The evidence of P.W.2 would indicate that his evidence has been planted for the purpose of the case and it is highly improbable and not acceptable. Apart from that, the cause of death was also not made known. That apart, P.W.1, who according to the prosecution had seen the occurrence, has not informed anybody for a period of 1-1/2 years. There is no evidence to show that even after seeing his mother assisting the other accused in murdering his father, he has not even questioned his mother about the same all along. In the face of such evidence the lower court should have rejected the the prosecution case outright, but has found the accused guilty on mere surmises and inferences, which were offered by the prosecution. In such circumstances, the lower court judgment has got to be set aside.

9. This Court heard the learned Addl. Public Prosecutor appearing for the State on the above contentions and also paid its full attention to the submissions made and also perused the recorded evidence, both oral and documentary.

10. In the instant case, it is the case of the prosecution that the husband of A-4, Vasudevan died due to the acts of the accused that took place in May 1997. The dead body was exhumed from the place where it was buried, in the presence of the Tahsildar, P.W.7 on the requisition made by the investigating officer and only the skeletal remains were found. Following the inquest, the skeletal remains were subjected to post-mortem and a certificate has also been given. The way in which the prosecution has broughtforth the evidence attributing the death of the deceased to the acts of the accused seems highly doubtful and improbable. Apart from that, this is a case where the prosecution had no direct evidence to offer. It rested its case on circumstances. Needless to say, in a case like this, the prosecution must place not only the circumstances necessary, but also prove the circumstances pointing to the guilt of the accused and also the hypothesis beyond all reasonable doubts by showing that except the accused no one could have committed the offence.

11. In the instant case neither the prosecution placed the circumstances nor proved the same. The prosecution placed much reliance on the confessional statement, which is extra-judicial in nature, which is alleged to have been given by A-4 to P.W.2 on

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2.10.98. According to the prosecution, the occurrence took place during the month of May 1997, though the alleged extra-judicial confession has been made, according to the prosecution, after a period of 1-1/2 years. In the instant case, P.W.2 was a person, who used to come to the house of the deceased and A-4 often. If to be so, what was the necessity for A-4 to make such a confession after a period of 1-1/2 years is not made known and the case of the prosecution that A-4 came forward to make a confessional statement after a period of 1-1/2 years would by itself indicate the utter improbability of the same.

12. Apart from that, in the instant case, P.W.1 is the son of the deceased and A-4 and according to the prosecution he witnessed the occurrence. If he had witnessed the occurrence, one would naturally expect him to have asked his mother as to why she assisted the others in killing his father. It is not the case of the prosecution that he ever questioned his mother. In the circumstances, it would be clear that the case of the prosecution that P.W.1, aged ten years, witnessed the occurrence is a vainful attempt made by the prosecution in order to strengthen its case, if possible, but could not do so. P.W.1, when examined though deposed that he saw the occurrence, the same could not be accepted since he has kept quiet for a period of 1-1/2 years and apart from that he has not even mentioned about the occurrence to anybody or even to any of his relatives and has not even questioned his mother as to why she joined the others in killing his father. Therefore, we are of the view that the evidence of P.W.1 seems highly improbable and he could not have seen the occurrence at all and it was planted as a witness in this case only to support the prosecution and, hence, it is highly unsafe to accept his evidence and act upon it.

13. Once the evidence of P.W.1 is rejected, then the case of the prosecution rests only upon the extra-judicial confession, which, in the opinion of the court is highly improbable and unacceptable. The prosecution has not putforth strong and acceptable evidence to bring home the guilt of the appellants and the trial court has, on a wrong perception and erroneously, convicted the appellants, which in the opinion of this Court cannot be sustained. The circumstances and the evidence putforth by the prosecution are not sufficient and acceptable to bring home the guilt of the accused and, hence, the appellants are entitled to acquittal.

14. In the result, the conviction and sentence imposed on the appellants by the trial court are set aside and they are acquitted of all the charges framed against them. The criminal appeal is allowed. It is reported that the appellants are on bail. Bail bonds executed by them shall stand cancelled.

Sd/
Asst.Registrar

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Sub Asst.Registrar

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To

1) The II Addl. Sessions Judge, Erode.
2)-Do- Thro' The Principal Sessions Judge, Erode.
3)The Judicial Magistrate, Satyamangalam
4)Do Through The Chief Judicial Magistrate , Erode.
5) The District Collector, Erode.
6) The Director General of Police, Chennai.
7) The Public Prosecutor, High Court, Madras.
8) The Superintendent of Central Prison, Coimbatore.
9)The Inspector of Police, Sathyamangalam Police Station, Erode Dist.
10)The District Superintendent of Police, Erode District.

1 cc to MR.A. Balaguru, Advocate, SR. 34614
1 cc to M/s. N. Manokaran, Advocate, SR. 34462

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